

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$3,441.37 for date of service 08/15/01.
- b. The request was received on 01/29/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/07/02
 - b. HCFA-1450/UB-92
 - c. TWCC 62 forms
 - d. EOB(s) from other carriers
 - e. Medical Records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and Responses to the Request for Dispute Resolution dated 05/07/02
 - b. Carrier Methodology
 - c. TWCC 62 forms
 - d. HCFA 1450-/UB 92
 - e. Reimbursement data
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/25/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 05/02/02. The response from the insurance carrier was received in the Division on 05/07/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: The requestor states in the correspondence dated 01/07/01 that they bill all payers identically regardless of whether the injury resulted on the job or not. The Requestor supplied a list of percentage reimbursement of all it's cases during the years of 1998 and 1999. This chart indicates that the average of all payers is 80% and and for Texas Workers' Compensation payers it is 84%. A chart that shows the percentage of payment by Texas Workers' Compensation carriers for the year of 2000 has also been submitted. The provider supplied EOB(s) from other insurance carriers preceding 09/11/00 that were paid at 100%. The provider states, "This sampling of 100% payment for services rendered at...evidences that: Acceptance of fees for services at...as fair and reasonable occurs across the spectrum of insurances." The provider indicates that Ambulatory Surgical Centers (ASC) are not covered by the Medical Fee Guidelines so they must be paid at a fair and reasonable rate.
2. Respondent: The Respondent's representative correspondence dated 05/07/02 states, "THE CARRIER, IN DETERMINING WHAT CONSTITUTES A 'FAIR AND REASONABLE RATE' DID CONSIDER THE MEDICARE, PPO, AND HMO PAYMENTS, AND REVIEWED THE COMMISSION'S OWN GUIDELINES FOR ACUTE CARE."

IV. FINDINGS

1. Based on Commission Rule 133.305 (d) (1) (2), the only date of service eligible for review is 08/15/01.
2. The provider billed the carrier \$4,559.37 for services rendered on 08/15/01.
3. The carrier reimbursed the provider \$1,118.00 for services rendered on date of service 08/15/01.
4. The total amount in dispute for date of service is \$3,441.37.
5. The services provided by the provider include such items as O.R. services, pharmaceutical products, medical and surgical supplies, non-sterile supplies, IV therapy services, Radiology services, anesthesia equipment services, EKG/ECG monitor services, and Recovery Room services.
6. After reviewing all information in the case file, no other EOB(s) or medical audits were noted. The Medical Review Division's decision is rendered based on denial codes submitted to the provider prior to the date of this dispute being filed.
7. The carrier denied the billed charges by denial code "M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE."

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "...shall be reimbursed at a fair and reasonable rate..."

Per the Texas Worker's Compensation Act and Rules §413.011(d):

Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304 (i). Even though the entire methodology may not necessarily be concurred with by the Medical Review Division, the requirements of the Rule have been met. The provider has submitted EOB(s) from this carrier to document what they consider inconsistent application by the carrier of it's own methodology. EOB(s) from other carrier showing a higher percentage of the billed amount reimbursed. The EOB(s) submitted by the provider indicate other carriers reimbursed at 100% of the billed charges. Regardless of the carrier's application of it's methodology, lack of methodology, or response, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. The provider's documentation is EOB(s) or is based on EOB(s). However, analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOB(s) for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement of 100% of the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 16th day of July 2002.

Donna M. Myers, B.S.
Medical Dispute Resolution Officer
Medical Review Division

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